

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

March 15, 2011

In the Matter of J.A. and B.A., Minors.

No. 298139

Muskegon Circuit Court

Family Division

LC No. 06-035654-NA

Before: GLEICHER, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Respondent-mother appeals as of right from the trial court order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (3)(g) and (3)(j). We affirm.

In December 2006, the trial court took jurisdiction over respondent's two minor children. The allegations against respondent included physical, emotional, and financial neglect.

Before terminating a respondent's parental rights, the trial court must make a finding that at least one of the statutory grounds under MCL 712A.19b(3) has been established by clear and convincing evidence. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). The trial court must order termination of parental rights if it finds that termination is in the child's best interests. MCL 712A.19b(5). This Court reviews parental termination cases for clear error. MCR 3.977(K). To warrant reversal, the trial court's decision must be more than maybe or probably wrong. *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009). Clear error exists "if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re BZ*, 264 Mich App 286, 296-297; 690 NW2d 505 (2004). A trial court may consider evidence on the whole record in making its best interest determination. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

The trial court did not clearly err in finding that §§ (3)(c)(i), (3)(g) and (3)(j) were established by clear and convincing evidence.

The first statutory ground was supported by sufficient evidence. The conditions that led to petitioner's intervention included respondent's erratic, angry behavior, poor parenting choices, unstable housing, and financial instability. Respondent had more than three years to learn to manage her anger, improve her parenting skills, provide a stable home environment, and achieve financial stability. There was substantial evidence that petitioner provided respondent with ample services to facilitate reunifying the family. Offered services included psychological

evaluation and mental health assessment through Community Mental Health (CMH), anger management classes, parent mentoring, parenting time, bus passes, and group and individual counseling through CHM, Hackley Life Counseling, and West Michigan Therapy services. Petitioner also provided services through the Family Reunification Program at Catholic Charities, along with résumé building and job search assistance, activities and services to obtain her GED, and transportation to petitioner's office and the children's school. The trial court heard persuasive testimony from respondent's case workers and counselors that despite support services, respondent's problematic attitudes and behaviors remained unchanged.

Respondent offered some proof that she could care for the children. She attended group classes, some individual counseling sessions, and worked with a parent mentor. The goal of the services was that respondent learn and consistently use skills acquired from the various support programs. Respondent's erratic behavior, inappropriate parenting choices, unstable housing, and financial instability had been at issue since the original petition. Respondent was given ample time and repeatedly offered support services to improve her parenting skills, find a job, and obtain suitable housing. There was sufficient evidence in the court record that she made minimal effort to meet these goals as ordered by the court and directed by petitioner. Importantly, there was considerable testimony, including that of respondent, that respondent distrusted anyone who was trying to help her and firmly believed that she did not have any problems and did not need any help. The trial court reasonably concluded that this pervasive attitude would continue to be a barrier to needed behavioral changes. Although respondent claimed at the termination hearing that she was ready to properly parent, her conduct in the months leading up to the hearing showed otherwise. Given the scope and duration of services provided to respondent, there was sufficient proof that the neglectful conditions that led to removal of the children would remain unchanged.

These proofs similarly satisfied the second and third statutory bases for termination. Respondent was unable to provide proper care for the children and keep them out of harm's way because her inadequate interpersonal skills, parenting skills, and attitudes largely remained unchanged. Also, respondent refused to understand the need for finding a job and stable housing. Although respondent had found housing before the hearing, the court record, as a whole, supported a finding that respondent would be unlikely to maintain a long-term stable home environment.

Respondent's reliance on *In re Boursaw*, 239 Mich App 161; 607 NW2d 408 (1999), overruled in part on other grounds by *In re Trejo*, 462 Mich at 353-354, is misplaced. In *Boursaw*, the trial court erroneously terminated the respondent-mother's parental rights despite ample evidence that she had made "significant strides" in meeting each criterion within six months of the child's removal, including prompt and consistent visitations, and proper and effective child discipline. Also, there was substantial evidence that the respondent-mother was highly motivated, was putting forth constructive effort in therapy, was gainfully employed, and had maintained suitable housing within nine months of the child's removal. Similarly, in *In re JK*, 468 Mich 202, 208; 661 NW2d 216 (2003), the respondent-mother had completed every term of her parent-agency agreement. She made significant improvements in her parenting skills, was drug-free, had graduated from high school, completed an independent-living course, and maintained adequate housing and employment. Nonetheless, the trial court erroneously terminated the respondent-mother's parental rights when it held that her supposed lack of

bonding with and attachment to her child was supported by sufficient evidence. The evidence in the present case, unlike that in *Boursaw* and *In re JK*, clearly documented respondent's unchanged behavior and attitudes, along with her entrenched lackluster efforts to reunite with the children over a period of more than three years.

Also, respondent implies that the trial court's findings were tainted because the trial judge and the prosecutor appeared to be highly irritated with respondent's demeanor and her case. We disagree. The court record, when read as a whole, does not bear this out. It is fair to assert that respondent's demeanor had a bearing on her case. Respondent's own attorney even acknowledged that respondent had an uncooperative and combative attitude that was a key source of her problems. With regard to the prosecutor, respondent offers only one example that, we hold, was a proper line of questioning when impeaching a witness. While the trial judge may have appeared irritated toward the end of the termination hearing, his irritation was understandable because respondent's testimony was fraught with "I don't remember," lacked credibility, and included outright refusals to answer straight-forward questions. However, the complete court record, spanning more than three years, shows that the trial judge was consistently patient and regularly took the time to speak with respondent directly. He explained to respondent what she needed to do to be reunited with the children. He offered her advice, clear direction, and encouragement. The judge even ordered continued reunification efforts that were contrary to permanency placement guidelines. Respondent's attorney, the L-GAL, and respondent at the termination hearing acknowledged that the judge was patient and took the time to listen to respondent. The evidence does not reflect that the trial court judge or prosecutor acted improperly.

Lastly, respondent indirectly argues that petitioner failed to comply with its statutory duties to assist her in reuniting with the children. This argument is also meritless. In general, petitioner must make reasonable efforts to rectify conditions and reunify families when possible. See *In re Terry*, 240 Mich App 14, 25-26; 610 NW2d 563 (2000); MCL 712A.18f; MCL 712A.19(7). The trial court record does not support respondent's claim that she was left to her own devices to obtain mental health treatment. The evidence showed, particularly with the testimony of respondent's psychologist, therapist, and foster care aide, that the counseling services offered by petitioner through CMH, Hackley Life Counseling and West Michigan Therapy were appropriate for a person diagnosed with bi-polar disorder and antisocial personality disorder. Respondent was specifically ordered to be assessed by and participate in counseling with CMH. Respondent is correct in asserting that her mental health treatment was inconsistent and had a possible effect on the outcome of this case. However, respondent received inconsistent mental health treatment for three reasons. First, respondent refused to agree to the treatment plan. Second, respondent was incarcerated twice, which thwarted reunification efforts. Third, respondent chose to drift in and out of counseling offered at CMH and two other counseling agencies. Any inadequate mental health treatment was the direct result of respondent's choices and actions and not because of any shortfall by petitioner. Respondent argues that petitioner should have sought a court order for involuntary hospitalization. There is no evidence in the court record that respondent's behavior rose to the standard necessary for involuntary hospitalization. MCL 330.1401. The law can and does impose obligations on petitioner to offer services to reunite families but cannot mandate desired outcomes that are determined, in large measure, by the participant's motivation and attitude; attributes which respondent clearly lacked throughout this case.

The trial court did not clearly err in finding there was clear and convincing evidence to support the three statutory grounds for termination.

Respondent had the opportunity to develop appropriate interpersonal and parenting skills, maintain suitable housing and financial stability by participating in, and benefiting from, the services provided by petitioner in an effort to reunite the family. Respondent failed to benefit from the provided services. There was no significant change in her neglectful parenting behaviors after more than three years of services from petitioner. Most critically, respondent readily admitted that she was unable or unwilling to place her trust in, or accept help from, others to improve her life circumstances. Reviewing the whole record and assessing respondent's credibility, the trial court reasonably concluded that respondent was incapable of providing proper care and custody of the children and that termination of respondent's parental rights was in their best interest.

The trial court did not clearly err in finding that §§(3)(c)(i), (3)(g) and (3)(j) were established by clear and convincing evidence.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ William C. Whitbeck

/s/ Donald S. Owens